

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-846-2020
	:	CR-1491-2020
v.	:	
	:	
TYRONE SINGLETON,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Tyrone Singleton (Defendant) was charged with one count of Burglary¹, one count of Criminal Trespass², one count of Terroristic Threats³, and one count of Simple Assault⁴ in docket CR-1491-2020. The charges arise from an incident between Defendant and an ex-girlfriend wherein Defendant allegedly grabbed the ex-girlfriend and then broke into her home and dragged her down the stairs. Defendant was also charged with one count of Terroristic Threats⁵, one count of Simple Assault⁶, one count of Stalking⁷, one count of Harassment⁸, and one count Criminal Mischief⁹ in docket CR-846-2020. These charges arise from a separate incident in which Defendant allegedly threatened the same woman and attacked her vehicle with a knife while she was inside the car. Defendant filed separate Omnibus Pretrial Motions under each docket on December 28, 2020. This Court held a hearing on both Omnibus motions on February 12, 2021. In his Omnibus motions, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing on all charges against Defendant in the above captioned matters and therefore the charges should be dismissed.

¹ 18 Pa.C.S. § 3502(a)(1).

² 18 Pa.C.S. § 3503(a)(1).

³ 18 Pa.C.S. § 2706(a)(1).

⁴ 18 Pa.C.S. § 2701(a)(3).

⁵ 18 Pa.C.S. § 2706(a)(1).

⁶ 18 Pa.C.S. § 2701(a)(3).

⁷ 18 Pa.C.S. § 2709.1(a)(1).

⁸ 18 Pa.C.S. § 2709(a)(4).

⁹ 18 Pa.C.S. § 3304(a)(5).

Background and Testimony

A preliminary hearing was held for docket CR-1491-2020 on October 27, 2020. Officer Ryan Brague (Brague) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On September 5, 2020, at approximately 12:46 a.m., Brague was dispatched to 2528 Grand Street in Lycoming County for a burglary in progress. N.T. 10/27/2020, at 1. Once he arrived, he made contact with Kelly Amos (Amos). Id. Brague noticed that the porch was in a state of disarray with several items knocked over and the doorjamb to the front door was “completely busted open” and the door was “off the hinges.” Id. Photographs of the state of the porch were taken by Brague himself and were shown to the Court at the preliminary hearing. Id. at 1-2. Brague testified that Amos informed him of what happened after he arrived. Amos explained that Defendant had come up onto her front porch wherein a struggle ensued. Id. Following the brief struggle, Defendant said, “I am going to get my gun” and then left the porch. Id. Amos ran inside her house, locked the door, and ran upstairs. Id. Defendant returned and kicked the door down, came upstairs where he found Amos, grabbed her by the hair and dragged her down the staircase where another struggle occurred. Id. Amos’ daughter called 911 while attempting to remove Defendant from fighting with Amos. Id. Brague testified that a Protection From Abuse (PFA) was in place against Defendant for Amos’ protection at the time of the incident. Id. at 3.

Under docket CR-846-2020, the Defendant waived his right to a preliminary hearing on July 7, 2020 based on the advice of the Public Defender responsible for his representation at that time. However, the Commonwealth presented Amos’ statement regarding the events of this case at the hearing on this motion, which was entered into evidence as Commonwealth Exhibit No. 1. In her statement, Amos states that Defendant blocked her lane of travel at a stop sign,

got out of his car and tried to open her car doors. Commonwealth Exhibit No. 1, at 1. He “got his knife out and stabbed a hole in my door....” Id. Amos attempted to flee but Defendant stopped in front of her and began stabbing her car with his knife again. Id. Amos states, “[w]hile he was stabbing my car he was telling me that he was going to kill me, that he was going to ‘fuck’ me up.” Id. Amos believed that Defendant would have stabbed her if he was able to get into the car. Id. at 2. Amos called 911 while continuing to try to get away from Defendant. Id. Defendant started hitting her car window with the end of his knife in order to break the window, then “punched my driver side mirror off.” Id. Amos further states that she is “afraid for my life. He definitely will try to kill me if given the opportunity... This has been a problem for a short while now and he has been violent with me before.” Id. At a separate hearing in front of the Honorable Ryan M. Tira on December 28, 2020, Amos was sworn in as a witness and testified that she had contacted Defendant’s counsel as well as the Lycoming County District Attorney’s office multiple times that she did not want this matter pursued any longer. N.T. 12/28/2020, at 5. Amos also stated that, if called as a witness at Defendant’s trial, she would refuse to testify. Id.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting

the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on all of the charges brought against him. Defendant’s primary contention is that Amos’ failure to testify at the preliminary hearing reduces the Commonwealth’s evidence to hearsay alone. The Court will address the charges in docket CR-1491-2020 first. To begin, Defendant argues that the Commonwealth failed to show a *prima facie* case for Count 1, Burglary. An individual commits this offense when

with the intent to commit a crime therein, the person: (1)(i) enters a building or occupied structure, or separately secured or occupied portion thereof, that is adapted for overnight accommodations in which at the time of the offense any person is present and the person commits, attempts or threatens to commit a bodily injury crime therein.

18 Pa.C.S. § 3502(a)(1).

Secondly, Defendant challenges the evidence the Commonwealth presented for Count 2, Criminal Trespass. This offense occurs when,

Knowing that he is not licensed or privileged to do so, he: (i) enters, gains entry by subterfuge or surreptitiously remains in any building or occupied structure or separately secured or occupied portion thereof.

18 Pa.C.S. § 3503(a)(1). Thirdly, Defendant also argues that the Commonwealth did not satisfy their *prima facie* burden on Count 3, Terroristic Threats. “A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another.” 18 Pa.C.S. § 2706(a)(1). Lastly, Defendant believes the Commonwealth lacked the evidence needed to satisfy their burden on Count 4, Simple Assault. This crime occurs when he “attempts by physical menace to put another in fear of imminent serious bodily injury.” 18 Pa.C.S. § 3701(a)(3).

In particular, Defendant contends that Amos refused to testify at the preliminary hearing and has since moved out of Pennsylvania. As a result, Brague was the only one to testify to what occurred on the night in question. Defendant alleges that, since Brague only relayed what Amos told him, his testimony was hearsay. Defendant argues that it is impermissible for the Commonwealth to rely on hearsay evidence at the preliminary hearing as articulated by Commonwealth v. McClelland, 233 A.3d 717 (Pa. 2020). The Commonwealth’s position is that, though they agree Amos will not be cooperative in the prosecution of Defendant, they argue that the underlying charges are still valid and believe they should be pursued because of the seriousness of the underlying charges. The Commonwealth argues that the evidence provided at the preliminary hearing was enough to satisfy the *prima facie* burden. This Court agrees with the Commonwealth on this docket. McClelland does not identify how much additional evidence is required to substantiate hearsay at a preliminary hearing. Brague

testified to his personal observation of the damage to the porch and the door to Amos' residence. Photographs of that destruction were presented to the Court. While we agree with Defendant that McClelland prevents the Commonwealth from solely relying on hearsay at the preliminary hearing, some hearsay is still permitted. Taking Brague's testimony of what he personally saw and the photographs viewed in the light most favorable to the Commonwealth as required, the Court believes that the Commonwealth has provided sufficient additional evidence to substantiate the hearsay to meet their *prima facie* burden. Nevertheless, if the Commonwealth wishes for a jury to convict on these counts, more evidence will be required to satisfy their burden at trial. However, that is not the question presented to the Court at this time. Therefore, the Defendant's motion to dismiss all charges in docket CR-1491-2020 is denied.

Next, the Court addresses the charges in docket CR-846-2020. As previously stated, the Defendant waived his right to a preliminary hearing for this specific case on July 7, 2020. Defendant acknowledges that he waived his right to a preliminary hearing on this docket, but argues that the advice of his counsel at the time of the waiver was so erroneous as to constitute ineffective assistance of counsel because defense counsel at the time knew that the victim did not want the case to continue when they advised Defendant to waive his right to the hearing. As such, Defendant wants to challenge the Commonwealth's ability to satisfy their *prima facie* burden regardless of his waiver. The Commonwealth argues that Defendant is not able to challenge the Commonwealth's evidence because he waived the preliminary hearing. This Court must agree with the Commonwealth on this issue as well. Rule 541 of the Pennsylvania Rules of Criminal Procedure states that a

defendant who is represented by counsel may waive the preliminary hearing at the preliminary arraignment or at any time thereafter. The defendant

thereafter is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.

Pa.R.Crim.P. Rule 541(a)(1). The comment to Rule 541 says that "by waiving the preliminary hearing, the defendant and defense counsel are acknowledging that sufficient evidence exists to make out a *prima facie* case...." Id. Since Defendant has not presented any evidence showing that the parties agreed at the time of the waiver to allow Defendant to challenge the Commonwealth's sufficiency of the evidence on these charges, this Court must hold that the Defendant's motion fails on this issue for this particular docket. Even if the Defendant was able to challenge, the Commonwealth's provision of Amos' statement at the hearing on these motions for this case satisfies the Commonwealth's *prima facie* burden on these charges. Therefore, Defendant's motion is without merit and is denied.

Conclusion

The Court finds that the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for all counts against Defendant in both above captioned dockets. Therefore, Defendant's Petitions for Writ of Habeas Corpus are denied.

ORDER

AND NOW, this 6th day of July, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that each of Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motions are hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Peter Campana, Esq.
Law Clerk (JMH)